



FEDERAL ELECTION COMMISSION

WASHINGTON, D C 20463

OCT 20 2004

**FIRST CLASS MAIL**

Gail Harmon, Esq.  
Elizabeth Kingsley  
1726 M Street, NW  
Suite 6000  
Washington, DC 20036

RE: MUR  
League of Conservation Voters Action  
Fund, and Gwendolyn Sommer, as Treasurer  
The League of Conservation Voters 527

Dear Ms. Harmon:

On April 7, 2004, the Federal Election Commission notified your client of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your clients at that time.

Upon further review of the allegations contained in the complaint, the Commission, on September 28, 2004, found that there is reason to believe that The League of Conservation Voters 527, League of Conservation Voters Action Fund, and Gwendolyn Sommer, as Treasurer, violated 2 U.S.C. §§ 434, 441a(f), 441b(a) and 11 CFR §§ 102.5, 104.10, 106.1 and 106.6, provisions of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information. Please note that respondents have an obligation to preserve all documents, records and materials relating to the Commission's investigation.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office along with your responses to the enclosed subpoena and written questions within 30 days of receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred

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MUR

League of Conservation Voters Action Fund, and Gwendolyn Sommer, as Treasurer

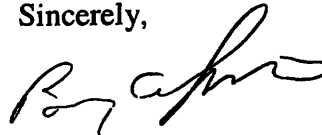
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Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

If you have any questions, please contact Brant Levine, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Bradley A. Smith  
Chairman

Enclosures

Factual and Legal Analysis

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**FEDERAL ELECTION COMMISSION**  
**FACTUAL AND LEGAL ANALYSIS**

**Respondents:**

League of Conversation Voters Action Fund and  
Gwendolyn M. Sommer, as treasurer  
League of Conservation Voters 527

**MUR:**

**I. INTRODUCTION**

This matter was generated by a complaint filed with the Federal Election Commission (“the Commission”) by Bush-Cheney ’04, Inc. *See* 2 U.S.C. § 437g(a)(1). The complaint alleges that the League of Conversation Voters (“LCV”) is violating federal campaign finance laws by spending funds, raised outside the limitations and prohibitions of the Federal Election Campaign Act of 1971, amended (“the Act”), to influence the upcoming presidential election. LCV argues in response to the complaint that, as a matter of law, its activities do not result in violations of the Act.

LCV appears to be operating as a nonconnected political committee with federal and nonfederal accounts, as described in 11 C.F.R. § 102.5. Accordingly, LCV must comply with the Act’s contribution limitations, source prohibitions, and reporting requirements, as well as with applicable statutory and regulatory provisions as interpreted in Advisory Opinion 2003-37 (Americans for a Better Country), which addresses the application of the Act and regulations to various campaign activities of a registered political committee.

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**II. FACTUAL AND LEGAL ANALYSIS**

**A. Facts**

The League of Conservation Voters Action Fund ("LCV PAC") is a political committee registered with the Commission as the separate segregated fund of the League of Conservation Voters, Inc., an entity organized under Section 501(c)(4) of the tax code that has also registered with the Commission as a Qualified Non-Profit Corporation. The League of Conservation Voters 527 ("LCV 527") is an organization registered under Section 527 of the Internal Revenue Code that files reports with the IRS. In its filing with the IRS, LCV 527 asserts that its purpose is "[t]o inform voters on federal candidates' environmental votes and positions."

The website that is shared by LCV, LCV PAC, and LCV 527 states: "Donations to LCV may be used for political purposes, such as supporting or opposing candidates" and, "Your contribution allows us to educate voters in key states about Bush's environmental record and the corporate polluters who help fund his campaign." In addition, one of the League of Conservation Voters entities, together with Environment2004, released a television commercial criticizing President Bush's position on drilling off the coast of Florida. The commercial aired on CNN from May 18th through May 25th. According to its second quarter disclosure reports filed with the IRS, one week before this ad aired, the League of Conservation Voters 527 disbursed \$20,000 on a media buy, which may have been used to pay for this commercial.

**B. Analysis**

In Advisory Opinion 2003-37, the Commission analyzed numerous proposed activities by a political committee with federal and nonfederal accounts, including solicitations and communications referring to a clearly identified federal candidate, voter identification and registration activities, get-out-the-vote ("GOTV") activities, and fundraising. The Commission determined that many of these activities were covered by the allocation regulations in 11 C.F.R.

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Part 106, and as for other activities not specifically covered by Part 106, the Commission identified the appropriate allocation ratio called for by the Act, as clarified by the recent ruling in *McConnell v. FEC*, 540 U.S. 93 (2003). AO 2003-37 at 2. Specifically, the Commission concluded that:

- Communications by a registered political committee, including fundraising communications, that promote, support, attack, or oppose a clearly identified federal candidate are “expenditures” that must be paid for with federal funds;
- Communications by a registered political committee for voter mobilization activities, even if they are not coordinated with a candidate and do not refer to any clearly identified federal candidate, must be funded at least partially with federal funds;<sup>1</sup>
- Funds received by a registered political committee from solicitations that promote, support, attack, or oppose federal candidates and “convey a plan” to promote, support, attack, or oppose federal candidates are treated as contributions; and
- Voter registration efforts of a registered political committee that target particular groups of voters must either be allocated or paid from federal funds.

See AO 2003-37 at 2-4, 9-10, 13, 15, and 20.<sup>2</sup>

Because LCV’s website contains a solicitation that promotes, supports, attacks, or opposes federal candidates and conveys a plan (or indicates that the funds will be used) to promote, support, attack, or oppose federal candidates, any funds received should be treated as contributions and reported to the Commission. AO 2003-37 at 20. Additionally, because LCV’s solicitations convey a plan to use funds to support or oppose specific federal candidates, they

<sup>1</sup> The term “voter mobilization activity” refers generally to voter identification, voter registration, and GOTV activities. See 11 C.F.R. § 106.6(b)(2)(iii). The expenses for voter mobilization activity must be allocated between the federal and nonfederal accounts of the committee based on the ratio of federal expenditures to total federal and nonfederal disbursements made by the committee during the two-year federal election cycle. AO 2003-37 at 4 (citing 11 C.F.R. § 106.6(c)). Communications made by a political committee for voter mobilization activities that refer to more than one clearly identified federal candidate—or to federal candidates and nonfederal candidates (or the entire ticket)—must be allocated to each such candidate according to the benefit reasonably expected to be derived. AO 2003-37 at 3 (citing 11 C.F.R. § 106.1).

<sup>2</sup> The interpretation of the Act “by the FEC through its regulations and advisory opinions is entitled to due deference and is to be accepted by the court unless demonstrably irrational or clearly contrary to the plain meaning of the statute.” *FEC v. Ted Haley Cong. Comm.*, 852 F.2d 1111, 1115 (9<sup>th</sup> Cir. 1988).

1 must be funded from LCV's federal account. *See* AO 2003-37 at 9-10, 14-15, 19-20. It appears  
2 that LCV may have used nonfederal funds to pay for these solicitations and that LCV may have  
3 deposited funds received from this online solicitation into its nonfederal account.

4 In addition to its website solicitation, LCV has run at least one television advertisement.  
5 Because this advertisement constituted a public communication that promotes, supports, attacks  
6 or opposes a clearly identified federal candidate, it must be funded from LCV's federal account.  
7 *See* AO 2003-37 at 9-10. Given the reported disbursements by LCV 527 for a media buy, there  
8 is reason to believe that LCV has improperly used nonfederal funds for federal expenditures in  
9 violation of the Act and regulations, as interpreted by the Commission in AO 2003-37.

10 **C. Conclusion**

11 The Commission finds reason to believe that League of Conservation Voters Action Fund  
12 and Gwendolyn M. Sommer, as treasurer, and the League of Conservation Voters 527 violated  
13 2 U.S.C. §§ 434, 441a(f), 441b(a) and 11 C.F.R. §§ 102.5, 104.10, 106.1 and 106.6.

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